

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 FAA-00 SS-15 NSC-05 L-03 PA-01

PRS-01 USIA-06 /060 W

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P 191908Z NOV 75

FM AMEMBASSY LONDON

TO SECSTATE WASHDC PRIORITY 6707

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E.O. 11652: L/A

TAGS: EAIR, UK

SUBJ: CIVAIR - US/UK TALKS ON AIRPORT AND AIRWAYS USER
CHARGES

REF: STATE 271539

1. SUMMARY: BILATERAL TALKS WITH BRITISH ON LANDING AND TERMINAL NAVIGATION CHARGES AT HEATHROW WERE HELD IN LONDON NOV. 18. USDEL SET FORTH POSITION AS OUTLINED REFTEL. UK MAINTAINED THAT ITS CHARGING PRACTICES ARE FULLY CONSISTENT WITH CHICAGO CONVENTION WHEREAS ANY U.S. MOVE TO IMPOSE COMPENSATORY CHARGES AGAINST BRITISH CARRIERS WOULD BE CLEAR VIOLATION OF THAT TREATY. AT CONCLUSION OF TALKS, USDEL SAID IT WOULD REPORT UK VIEWS FOR FURTHER CONSIDERATION BUT DID NOT BELIEVE COMPELLING CASE HAD BEEN MADE TO ALTER U.S. DETERMINATION THAT UK CHARGES ARE DISCRIMINATORY. GUIDANCE IS REQUESTED CONCERNING APPARENT INCONSISTENCY BETWEEN U.S. LEGISLATION AND CHICAGO CMNVENTION. END SUMMARY.

2. AT OPENING OF TALKS, USDEL SET FORTH U.S. POSITION AS OUTLINED REFTEL AND THROUGHOUT TALKS STUCK CLOSELY TO INSTRUCTIONS CONTAINED THEREIN. UKDEL INITIAL STATEMENT REGISTERED UK UNHAPPINESS WITH PROCEDURE U.S. HAD FOLLOWED.
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LOWED ON USER CHARGE ISSUE. THEY NOTED VERY IMPORTANT

AND COMPLEX AVIATION RELATIONSHIP THAT HAS LONG EXISTED BETWEEN U.S. AND UK. DURING THAT RELATIONSHIP MANY PROBLEMS HAD ARISEN BUT MOST HAD BEEN SATISFACTORILY RESOLVED THROUGH THE CONSULTATIVE MECHANISM OF THE AIR SERVICES AGREEMENT (ASA). IN PRESENT CIRCUMSTANCES, HOWEVER, TALK HAD NOT BEEN REQUESTED IN ACCORDANCE WITH THE ASA. INSTEAD, U.S. HAD SENT A TECHNICAL, FACT-FINDING TEAM TO LONDON IN MARCH AND, BASED ON INFORMATION THEN GATHERED AND WITHOUT EVEN ASKING FOR UK VIEWS OR ARGUMENTATION, HAD REACHED A "DETERMINATION" THAT UK WAS GUILTY OF SOME ILL-DEFINED DISCRIMINATION. UKDEL NOTED THAT "DETERMINATION" WAS RELEASED TO THE PRESS WHILE UK NOT EVEN OFFICIALLY AWARE OF WHAT IT WAS SUPPOSED TO BE GUILTY OF LET ALONE THE RATIONALE USED FOR REACHING SUCH A "DETERMINATION". CURRENT TALKS WERE FIRST OPPORTUNITY UK GIVEN TO REBUT SERIOUS CHARGES MADE IN EMBASSY'S AIDE MEMOIRE. GENERAL THRUST OF UK REMARKS WAS THAT THIS PROCEDURE SCARCELY DESIGNED TO MAINTAIN A CLOSE AND CONSTRUCTIVE BILATERAL AVIATION RELATIONSHIP.

3. HAVING GOTTEN THIS OFF THEIR CHEST, UKDEL THEN ASKED WHETHER USDEL IN LONDON IN CAPACITY OF "HANGING JUDGES" TO DELIVER SENTENCE ON "GUILTY PARTY" OR WHETHER USDEL WOULD BE IN A POSITION TO WITHDRAW CHARGES IF UK PRESENTED PERSUASIVE CASE. USDEL SAID U.S. HAD FOLLOWED PROCEDURES SPECIFIED IN ITS NATIONAL LEGISLATION. FACTS OF SITUATION HAD BEEN GATHERED AND ON BASIS OF THOSE FACTS IT HAD BEEN ADDUCED THAT BRITISH USER CHARGES ARE DISCRIMINATORY IN THREE SPECIFIC INSTANCES. ALTHOUGH THIS FINDING HAD ALREADY BEEN MADE THIS SHOULD NOT BE CONSIDERED FINAL UNTIL U.S. ACTS ON BASIS OF ITS FINDING. UK NOW BEING GIVEN OPPORTUNITY TO PRESENT ITS VIEWS AND UK SHOULD ASSUME THAT ITS ARGUMENTS WILL BE CONSIDERED AND U.S. WILL ACT IN REASONABLE AND RESPONSIBLE MANNER.

4. UKDEL THEN ASKED FOR CLEAR STATEMENT FROM USDEL ON WHETHER U.S. BELIEVES UK IS IN BREACH OF ARTICLE 15 OF CHICAGO CONVENTION. USDEL SAID IT ACTING IN ACCORDANCE WITH PROVISIONS OF U.S. LAW AND NOT ON BASIS OF CHICAGO CONVENTION BUT U.S. DOES NOT BELIEVE IT IS ACTING IN A LIMITED OFFICIAL USE

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WAY WHICH IS INCONSISTENT WITH CHICAGO CONVENTION. UKDEL SAID THE ARTICLE 15 ISSUE WAS CRITICAL BECAUSE UK DOES NOT REPEAT NOT BELIEVE ITS CHARGING SYSTEM IS INCONSISTENT WITH ARTICLE 15 BUT IF U.S. WERE TO IMPOSE COMPENSATORY CHARGES AGAINST UK AIRLINES, AS IS ENVISAGED BY FAIR COMPETITIVE PRACTICES ACT (FCPA), THIS WOULD BE A CLEAR VIOLATION OF ARTICLE 15. IN THIS CONNECTION, THEY CITED AUGUST 13, 1974 LETTER FROM ASST. SEC. HOLTON TO

SENATOR CANNON IN WHICH DEPARTMENT STATED THAT IMPOSITION
OF COMPENSATORY CHARGES UNDER FCPA WOULD BE A BREACH OF
ARTICLE 15 UNLESS IT IS FOUND THAT THE OTHER PARTY IS
ITSELF IN VIOLATION OF ARTICLE 15. UKDEL ALSO ARGUED
THAT ARTICLE 15 HAS A PROCEDURE FOR DEALING WITH PROBLEMS

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WHICH U.S. IS APPARENTLY IGNORING. UKDEL FINALLY AGREED
TO DISCUSS SPECIFICS OF THEIR CHARGING PRACTICES THAT
ARE HELD TO BE DISCRIMINATORY BUT THEY INSISTED THAT
THEIR WILLINGNESS TO DO SO WAS ONLY TO ACCOMMODATE THE
U.S. AND DID NOT IN ANY WAY IMPLY THAT THEY ACCEPT THAT
ANY OF THEIR PRACTICES ARE DISCRIMINATORY WITHIN THE
MEANING OF ARTICLE 15.

5. REGARDING TERMINAL NAVIGATION CHARGES, UKDEL SAID
ANY GOVERNMENT HAS A NUMBER OF OPTIONS AVAILABLE TO IT
TO PAY FOR NAVIGATION CHARGES AND EACH ADOPTS AN APPROACH
THAT IT CONSIDERS APPROPRIATE TO ITS CIRCUMSTANCES.
CLEARLY THE SITUATION FACING THE UK, A SMALL ISLAND WITH
A LIMITED DOMESTIC AIR NETWORK BUT WITH A REQUIREMENT TO
SERVICE HEAVY INTERNATIONAL AVIATION DEMANDS IS QUITE
DIFFERENT FROM THAT OF THE U.S., A VAST LAND MASS WITH

AN EXTENSIVE DOMESTIC AIR NETWORK AND A COMPARATIVELY SMALL INTERNATIONAL SYSTEM. BECAUSE OF THESE DIFFERENCES AS WELL AS OTHERS, THE GOVERNMENTS HAVE ADOPTED DIFFERENT CHARGING POLICIES. EVEN THOUGH U.S. ARGUES THAT CHARGES SHOULD BE RELATED TO COSTS OF PROVIDING THE SERVICE, IT DOES NOT ADHERE STRICTLY TO THIS APPROACH SINCE UNDER U.S. SYSTEM GENERAL AVIATION AIRCRAFT DO NOT BEAR THEIR LIMITED OFFICIAL USE

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FAIR SHARE OF THE COSTS OF OPERATING AND MAINTAINING THE SYSTEM. SIMILARLY, THE U.S. LEVIES AN 8 PERCENT TICKET TAX ON DOMESTIC FLIGHTS AND A \$3/PASSENGER DEPARTURE TAX ON INTERNATIONAL FLIGHTS WHICH ARE NOT STRICTLY RELATED TO COSTS. THE DOMESTIC TAX PARTICULARLY APPEARS TO BE MORE CLOSELY RELATED TO THE VALUE OF THE SERVICE PROVIDED RATHER THAN THE COSTS OF SUCH SERVICE. MOREOVER, U.S. TAXING SYSTEM RAISES A POOL OF REVENUES WHICH ARE THEN ALLOCATED IN SOME WAY TO COVER COSTS BUT WITHOUT A DIRECT LINK BETWEEN REVENUES RAISED AND COSTS INCURRED. IN SHORT, U.S. AND UK CIRCUMSTANCES ARE DIFFERENT, THEIR REQUIREMENTS AND THEIR POLICIES ARE DIFFERENT AND THEREFORE THEIR CHARGING PRACTICES ARE NOT DIRECTLY COMPARABLE. UKDEL ASKED, WITH APPARENT SINCERITY, WHETHER U.S. WOULD BE HAPPY IF UK ADOPTED THE U.S. TICKET TAX APPROACH, ELIMINATING CHARGING DISTINCTION BETWEEN DOMESTIC AND INTERNATIONAL FLIGHTS AND USING INSTEAD A DISTINCTION BASED ON STAGE-LENGTH OF FLIGHTS. USDEL SAID IT WOULD REFER QUESTION TO DEPARTMENT FOR GUIDANCE.

6. REGARDING LANDING FEES, UKDEL SAID BRITISH AIRPORT AUTHORITY (BAA) MUST CHARGE SO AS TO RECOVER ALL COSTS AND ANY SYSTEM OF ASSESSING CHARGES TO COVER COSTS MUST TO SOME EXTENT BE ARBITRARY. MANY OPTIONS ARE AVAILABLE. UK HAS CHOSEN A SYSTEM BASED ON ABILITY TO PAY OR, EXPRESSED ANOTHER WAY, VALUE OF SERVICE PROVIDED. IT APPLIES THESE CHARGES IN A COMPLETELY NON-DISCRIMINATORY WAY AND ITS SYSTEM IS FULLY CONSISTENT WITH ARTICLE 15 OF CHICAGO CONVENTION. U.S. ARGUES THAT CHARGING FORMULA OUGHT TO BE RELATED TO COSTS YET IT ACCEPTS A WEIGHT-BASED CHARGING FORMULA THAT NOT FULLY JUSTIFIED ON BASIS OF COST DIFFERENTIAL. MOREOVER, A FLAT LANDING FEE AT HEATHROW WOULD MEAN THAT LANDING CHARGES FOR A MANCHESTER-LONDON FLIGHT WOULD EQUAL 25 PERCENT OF THE FARE; LANDING CHARGES FOR A NEW YORK-LONDON FLIGHT WOULD BE ONLY 3 PERCENT OF THE FARE; AND A SYDNEY-LONDON FLIGHT WOULD PAY ONLY 1 PERCENT OF THE FARE. UK SEES NOTHING PARTICULARLY REASONABLE IN THIS APPROACH. EVEN VIEWED STRICTLY IN TERMS OF COSTS, UKDEL PRESENTED RATHER CAREFULLY SELECTED DATA WHICH WERE DESIGNED TO MAKE A CASE THAT BAA CHARGING FORMULA ACTUALLY UNDER-

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CHARGED U.S. CARRIERS FOR FACILITIES THEY USED AT HTH-
ROW. USDEL QUESTIONED THE DATA AND REQUESTED FULLER
INFORMATION. (DATA PRESENTED WILL BE HAND-CARRIED TO
WASHINGTON BY RETURNING MEMBERS OF USDEL.)

7. USDEL RAISED ANOMALY OF CHARGING INTERCONTINENTAL
LANDING FEE FOR U.S. FLIGHTS WHICH ORIGINATE ON CONTINENT
AND LAND AT HEATHROW EN ROUTE TO U.S. UKDEL APPEARED TO
ACKNOWLEDGE IT WAS ON RATHER WEAK GROUND IN DEFENDING
THIS PRACTICE BUT ARGUED THIS CHARGING PRACTICE IS
UNIFORMLY APPLIED AGAINST ALL AIRLINES, THAT IT ONLY
AFFECTED SOME 21 U.S. CARRIER FLIGHTS OUT OF A TOTAL OF
130 SUCH FLIGHTS BY ALL AIRLINES AND IF UK CHANGED
PRACTICE FOR U.S. CARRIERS IT WOULD HAVE TO CHANGE IT
FOR ALL. (USDEL GAINED IMPRESSION THAT UK SIDE UNWILLING
EVEN TO CONSIDER ANY COMPROMISE IN THIS AREA UNLESS GIVEN
SOME INDICATION FROM U.S. THAT OTHER CHARGES OF DISCRIMI-
NATION WOULD BE DROPPED AS A RESULT.)

8. AT CONCLUSION OF TALKS, UKDEL ASKED WHERE MATTERS

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NOW STAND. UQDEL SAID THAT WITH RESPECT TO NAVIGATION CHARGES, IT WOULD SEEK USG VIEWS ON QUESTION OF RELEVANCE OF ARTICLE 15 ISSUE AND COMMENTS ON UK SUGGESTION REGARDING SHIFT TO A CHARGING FORMULA BASED ON STAGE-LENGTH RATHER THAN DISTINCTION BETWEEN DOMESTIC AND INTERNATIONAL FLIGHTS (PARA 5 ABOVE). WITH REGARD TO ALL ISSUES, USDEL WILL REPORT UK ARGUMENTS AND PRICING PHILOSOPHY. HOWEVER, IN USDEL VIEW, THIS INFORMATION WAS ALREADY KNOWN IN WASHINGTON BEFORE FINDING AS TO DISCRIMINATION WAS MADE AND USDEL DID NOT BELIEVE A COMPELLING CASE HAD BEEN MADE TO CHANGE THAT FINDING. USDEL SAID IT DID NOT KNOW WHAT THE NEXT STEP WOULD BE OR WHEN IT MIGHT BE TAKEN. UKDEL ASKED TO BE INFORMED BEFORE ANY FURTHER ACTION IS TAKEN AND EXPRESSED THE HOPE THAT U.S. WOULD ALSO AGREE TO CONSULT BEFORE ANY ACTION. UKDEL ALSO MADE CLEAR THAT IT WOULD REGARD IMPOSITION OF ANY COMPENSATORY CHARGES AGAINST BRITISH AIRWAYS IN U.S. AS VIOLATION OF CHICAGO CONVENTION THAT WOULD LEAD TO RETALIATION IN SOME FORM.

9. COMMENT: IT IS OUR VIEW THAT USG MUST COME TO GRIPS WITH THE QUESTION OF THE RELATIONSHIP OF ARTICLE 15 OF THE CHICAGO CONVENTION AND THE FCPA. IT SEEMS TO US UK LIMITED OFFICIAL USE

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ARGUMENT HAS MERIT THAT COMPENSATORY CHARGES UNDER FCPA WOULD VIOLATE ARTICLE 15 UNLESS THERE HAS FIRST BEEN A FINDING THAT THE OTHER PARTY IS ITSELF IN BREACH OF ARTICLE 15. IF THIS IS THE CASE, THEN ISSUE FOR USG IS WHICH HAS PRECEDENCE, THE TREATY OR THE LAW. WHILE THIS ISSUE MAY ULTIMATELY HAVE TO BE DECIDED IN THE COURTS, WE WOULD HOPE THAT, IF CLEAR INCONSISTENCY EXISTS, USG WOULD REACH INTERNAL DECISION AS TO WHAT COURSE OF ACTION IS IN OVERALL NATIONAL INTEREST BEFORE WE GO MUCH FARTHER DOWN THE ROAD TOWARD IMPOSING COMPENSATORY CHARGES AGAINST UK.

10. BAA IS SUPPOSED TO PROVIDE SOME ADDITIONAL COST INFORMATION TO US AND ITS FEE SCHEDULE FOR NEXT SEASON IS PRESENTLY BEING FORMULATED. IT SEEMS TO US THAT NO FURTHER ACTION SHOULD BE TAKEN BY USG PENDING THESE DEVELOPMENTS EVEN THOUGH WE DO NOT REALLY EXPECT EITHER WILL BASICALLY ALTER THE PRESENT SITUATION. WE ALSO BELIEVE THAT COMITY WOULD REQUIRE THAT WE NOTIFY UKG BEFORE ANY ACTION IS TAKEN AND AGREE TO CONSULT IF REQUESTED TO DO

SO.

11. ACTION REQUESTED: GUIDANCE ON ISSUES PARA 8 IS
REQUESTED.

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Message Attributes

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